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REGIONAL HEARING CLERK
EPA REGION VI

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

IN THE MATTER OF

**Valero Refining – Texas L.P.
Corpus Christi West Plant
Nueces County, Texas**

Respondent.

**CWA SECTION 311 CLASS I
CONSENT AGREEMENT
AND FINAL ORDER
UNDER 40 CFR § 22.13(b)**

Docket No. CWA-06-2018-4810

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LEGAL AUTHORITY

1. This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(B)(i) of the Clean Water Act (“Act”), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 CFR §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 6, who has in turn delegated them to the Director of the Superfund Division of EPA, Region 6, who has, by his concurrence, re-delegated the authority to act as Complainant to the Branch Chief of the Emergency Management Branch (formerly identified as Associate Director, Prevention and Response Branch) in Region 6, Delegation No. R6-2-51, dated February 13, 2008 (“Complainant”).

CONSENT AGREEMENT

SPCC Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

2. Section 311(j)(1)(C) of the Act, 33 USC § 1321(j)(1)(C), provides that the President

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shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges...."

3. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

4. EPA promulgated the Spill Prevention Control & Countermeasure (SPCC) regulations pursuant to delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 USC § 1251 *et seq.*, which established certain procedures, methods and other requirements upon each owner and operator of a non-transportation-related onshore or offshore facility, if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 CFR § 110.3 may be harmful to the public health or welfare or the environment of the United States ("harmful quantity").

5. In promulgating 40 CFR § 110.3, which implements Section 311(b)(4) of the Act, 33 USC § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

6. Respondent is a firm conducting business in the State of Texas, with a place of business located at 1300 Cantwell Lane, Corpus Christi, TX 78403, and is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 CFR § 112.2.

7. Respondent is the owner within the meaning of Section 311(a)(6) of the Act, 33 USC § 1321(a)(6), and 40 CFR § 112.2 of a bulk storage facility (facility is a petroleum refinery), the Corpus Christi West Plant facility, located in Nueces County, Texas ("the facility"). The approximate coordinates of the facility are 27.815244° N and -97.489248° W. Drainage from the facility travels to Corpus Christi Inner Harbor.

8. The facility has an aggregate above-ground storage capacity greater than 1320 gallons of oil in containers each with a shell capacity of at least 55 gallons. Facility capacity is approximately 300,624,198 gallons.

9. The Corpus Christi Inner Harbor is a navigable water of the United States within the meaning of 40 CFR § 112.2.

10. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the facility.

11. The facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity ("an SPCC-regulated facility").

12. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 CFR § 112.1 Respondent, as the owner of an SPCC-regulated facility, is subject to the SPCC regulations.

SPCC Allegations

13. Paragraph 6 through 12 above are re-stipulated as though fully set forth herein.
14. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare a SPCC plan in writing, and implement that plan in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112.
15. On March 6, 2018 EPA inspected the facility and found the following deficiencies in the Respondent's SPCC plan for the facility as follows:
 - a. Respondent's plan failed to include a prediction of the direction, rate of flow, and total quantity of oil that could be discharged for each type of major equipment failure where experience indicates a reasonable potential for equipment failure as required at 40 CFR § 112.7(b).
 - b. Respondent failed to adequately discuss in the plan appropriate containment and or diversionary structures or equipment to prevent a discharge for piping and related appurtenances as required at 40 CFR § 112.7(c).
 - c. Respondent failed to discuss in the plan that records of inspections or tests are signed by a supervisor or inspector as required at 40 CFR § 112.7(e).
 - d. Respondent's plan failed to adequately address training of oil-handling personnel in operation and maintenance of equipment, failed to designate a person accountable for discharge prevention at the facility in accordance with 40 CFR § 112.7(f)(1)-(f)(2).
 - e. Respondent failed to discuss in the plan whether there is a tank car and tank truck loading and unloading rack present at the facility and the requirements for the truck loading rack as required at 40 CFR § 112.7(h)(1)-(3).
 - f. Respondent's plan failed to address brittle fracture evaluation of field constructed aboveground containers are conducted after tank repair, alteration, reconstruction, or change in service that might affect the risk of a discharge or after a discharge/failure due to brittle fracture or other

catastrophe, and appropriate action taken in accordance with 40 CFR § 112.7(i).

- g. Respondent failed to discuss in their plan the conformance with applicable more stringent state rules, regulations, guidelines, and other effective discharge prevention and containment procedures in accordance with 40 CFR § 112.7(j).
- h. Respondent failed to discuss in their plan whether containers materials and construction are compatible with material stored and conditions of storage such as pressure and temperature as required at 40 CFR § 112.8(c)(1).
- i. Respondent failed to provide bulk storage tank installations with secondary containment to hold the capacity of the largest container and sufficient freeboard of precipitation in accordance with 40 § 112.8(c)(2).
- j. Respondent failed to adequately address in the plan drainage of contaminated rainwater from diked areas into storm drain or open watercourse and whether bypass valve is opened and resealed under responsible supervision and adequate records of drainage are kept in accordance with 40 CFR § 112.8(c)(3).
- k. Respondent failed to adequately address in their plan the testing or inspection of each aboveground container for integrity on a regular schedule and whenever material repairs occur and the frequency and type of testing and inspections are documented and in accordance with industry standards and take into account the container size, configuration and design as required at 40 CFR § 112.8(c)(6).
- l. Respondent failed to adequately discuss in their plan how leakage through defective internal heating coils are controlled through monitoring steam returns or having exhaust lines pass through a settling tank, skimmer, or other separation or retention system as required at 40 CFR § 112.8(c)(7).
- m. Respondent failed to adequately address in their plan whether effluent treatment facilities observed frequently enough to detect possible system upsets that could cause a discharge as required at 40 CFR § 112.8(c)(9).
- n. Respondent's plan failed to adequately address aboveground valves, piping, and appurtenances such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces and if they are regularly inspected to assess their general

condition, as well as integrity and leak testing conducted on buried piping at time of installation, modification, construction, relocation, or replacement as required at 40 CFR § 112.8(d)(4).

16. Respondent's deficiencies in its SPCC plan for the facility violated 40 CFR § 112.3, and impacted its ability to prevent an oil spill.

Waiver of Rights

17. Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the other specific violations alleged above. Respondent waives the right to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

Penalty

18. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$26,196.00**.

Payment Terms

Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

19. Within thirty (30) days of the effective date of the Final Order, the Respondent shall pay the amount of **\$26,196.00** by means of a cashier's or certified check, or by electronic funds transfer (EFT). The Respondent shall submit this Consent Agreement and Final Order, with original signature, along with documentation of the penalty payment to:

Oil Spill and Response Team Leader
U. S. Environmental Protection Agency

Region 6 (6SF-EO)
1445 Ross Avenue
Dallas, Texas 75202-2733

- If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "OSTLF-311" and docket number CWA-06-2018-4810. If you use the U.S. Postal Service, address the payment to:

U.S. Environmental Protection Agency, Fines & Penalties
P.O. Box 979077, St. Louis, MO 63197-9000

- If you use a private delivery service, address the payment to:

U.S. Bank
1005 Convention Plaza, Mail Station SL-MO-C2GL
St. Louis, MO 63101

- The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following person:

Lorena Vaughn
Regional Hearing Clerk (6RC)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

20. Failure by the Respondent to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 USC §1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

General Provisions

21. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

22. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 USC §1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.


Valero Refining – Texas L.P.

Date: 9/6/2018


Dennis Payne, VP & General Manager of West Plant

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/24/18



Ronald D. Crossland
Branch Chief
Emergency Management Branch
Superfund Division

FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 USC §1321(b)(6) and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," codified at 40 CFR Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement.

Date: 09/25/2018




Carl E. Edlund, P.E.
Director
Superfund Division

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing "Consent Agreement and Final Order," issued pursuant to 40 C.F.R. 22.13(b), was filed on October 1, 2018, with the Regional Hearing Clerk, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202-2733; and that on the same date a copy of the same was sent to the following, in the manner specified below:

Copy by certified mail,
return receipt requested:
7004 1350 0003 4884 7224

NAME: Ms. Aimee Almaraz
ADDRESS: 1300 Cantwell Lane
Corpus Chrisit, Texas 78403


Bryant Smalley
Oil Spill & Response Team Leader